

1 ORRICK, HERRINGTON & SUTCLIFFE LLP  
2 KAREN G. JOHNSON-MCKEWAN (SBN 121570)  
kjohnson-mckewan@orrick.com  
3 ANNETTE L. HURST (SBN 148738)  
ahurst@orrick.com  
4 GABRIEL M. RAMSEY (SBN 209218)  
gramsey@orrick.com  
5 405 Howard Street, San Francisco, CA 94105  
Tel: 1.415.773.5700 / Fax: 1.415.773.5759  
6 PETER A. BICKS (*pro hac vice*)  
pbicks@orrick.com  
7 LISA T. SIMPSON (*pro hac vice*)  
lsimpson@orrick.com  
51 West 52<sup>nd</sup> Street, New York, NY 10019  
8 Tel: 1.212.506.5000 / Fax: 1.212.506.5151  
9 BOIES, SCHILLER & FLEXNER LLP  
DAVID BOIES (*pro hac vice*)  
dboies@bsfllp.com  
10 333 Main Street, Armonk, NY 10504  
Tel: 1.914.749.8200 / Fax: 1.914.749.8300  
11 STEVEN C. HOLTZMAN (SBN 144177)  
sholtzman@bsfllp.com  
12 1999 Harrison St., Ste. 900, Oakland, CA 94612  
Tel: 1.510.874.1000 / Fax: 1.510.874.1460  
13 ORACLE CORPORATION  
DORIAN DALEY (SBN 129049)  
dorian.daley@oracle.com  
15 DEBORAH K. MILLER (SBN 95527)  
deborah.miller@oracle.com  
16 MATTHEW M. SARBORARIA (SBN 211600)  
matthew.sarboraria@oracle.com  
17 RUCHIKA AGRAWAL (SBN 246058)  
ruchika.agrawal@oracle.com  
18 500 Oracle Parkway,  
Redwood City, CA 94065  
19 Tel: 650.506.5200 / Fax: 650.506.7117  
20 *Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.  
Plaintiff,  
25 v.  
GOOGLE INC.  
Defendant.

Case No. CV 10-03561 WHA  
**[PROPOSED] ORDER GRANTING  
ORACLE'S MOTION IN LIMINE #3  
REGARDING DR. ASTRACHAN**  
Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William H. Alsup

1        This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #3  
 2 Regarding Dr. Astrachan, as well as any Opposition thereto and Reply in support thereof, and any  
 3 and all additional supporting papers.

4        Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS  
 5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6        Dr. Astrachan's analysis, opinions, and conclusions are stricken and his testimony on  
 7 those matters identified in Oracle's motion are excluded under Federal Rules of Evidence 402,  
 8 403, 702, 703, and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its  
 9 progeny.

10       Specifically, Dr. Astrachan's opinions and conclusions related to the fair use factor one  
 11 sub-issues of transformative and commercial use, and his testimony on the same, are hereby  
 12 excluded as legally irrelevant and prejudicial as they are inconsistent with applicable law,  
 13 including the appellate opinion of the Federal Circuit in this case, and because Dr. Astrachan, as a  
 14 computer scientist, offers opinions on economic and commercial issues that he is not qualified to  
 15 render. Dr. Astrachan is Defendant Google's only expert witness on fair use factor one, therefore  
 16 this Order excluding Dr. Astrachan's opinions and testimony, along with Google's admissions  
 17 and the Federal Circuit's decision on factor one, precludes Google from offering evidence or  
 18 testimony at trial that its use of Java SE is not commercial and not transformative.

19       Dr. Astrachan's analysis, opinions, and conclusions that Google was forced to copy the  
 20 declaring code or the structure, sequence, and organization of the 37 Java API packages in order  
 21 to access the functionality of the Java programming language, and his testimony on the same, are  
 22 excluded as irrelevant, prejudicial, and contrary to the appellate opinion of the Federal Circuit and  
 23 Google's prior admissions in this case.

24       Dr. Astrachan's analysis, opinions, and conclusions related to fair use factor four, the  
 25 effect on the potential market for or the value of Java SE, and his testimony on the same, are  
 26 hereby excluded as unreliable and prejudicial because Dr. Astrachan, a computer scientist, is not  
 27 qualified to render opinions on economic and commercial issues, and he applies no discernible,  
 28 repeatable, or generally accepted methodology.

1  
2 IT IS SO ORDERED.  
3  
4  
5 THE HONORABLE WILLIAM ALSUP  
6 UNITED STATES DISTRICT JUDGE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28